

REMARKS

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendments, claims 1-20 are pending in the application, with claims 1,15, and 17 being the independent claims. Based on the above Amendment and the following Remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 102 and 103***Claims 1-3 and 6***

The Examiner has rejected claims 1-3 and 6 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,477,743 to Gross et al. (“Gross”). Gross, taken individually or combined, fail to teach or suggest the enclosure of the present invention including a cap, spout, and stem. In particular, Gross fails to disclose a three-component closure, namely one comprising a cap, a spout and a stem, as is called for by independent claim 1.

Gross does not disclose such features. Instead, Gross discloses a “closure system 20 [that] includes *two basic components*, [sic] (1) a body 30, [sic] and (2) a spout 40.” *See Gross*, col. 5, lines 1-4 (*emphasis added*). The enclosure includes a spout 40 and closure body 30 having a base 50 and a reciprocable conduit 70 joined by a flexible wall 80. *See Gross*, col. 2, lines 49-54 and FIGs. 3-4. The conduit is thus integrally formed with the body. *See Gross*, FIGs. 3-4.

In use, the spout is rotated but remains fixed axially. *See Gross*, col. 7, lines 24-30. Cam tracks transmit the rotational force on the spout to the conduit thereby causing the conduit to move downwardly from a closed to an open position. *See Gross*, col. 7, lines 30-35. Wall 80, which flexibly connects the conduit to the base, deforms or deflects to allow the conduit to move downwardly. *See Gross*, col. 7, lines 30-38. The wall portion 80 of the cap thus guides the axial movement of the conduit within the spout.

Whereas Gross' conduit 70 is an integral portion of the cap, stem 36 of the present invention is a discrete member of the closure. *See* FIGs. 1-2. The closure called for by claim 1 includes *three distinct components*: a cap, a spout, *and* a stem. The stem is positioned radially within a cap sleeve and an inner spout skirt such that it may slide axially from a closed position to an open position. *Id.*

Gross teaches away from forming the stem as a discrete component from the cap. As noted above, Gross discloses a flexible wall 80 connecting the conduit to the base. In addition to guiding the axial movement of conduit 70, the wall applies resistance to conduit 70 and sets a lower axial limit of the conduit. *See* Gross, col. 7, lines 45-53. If the conduit were distinct from the cap without wall 80, the conduit would not be guided in the sleeve and would be free to lower into the container. In contrast, as illustrated in FIG. 1, the stem of the present invention is axially guided by stem guide 52. The lower axial limit is set by the rotational limit imposed on the spout by a rotational stop. *See* Specification, ¶ 56.

For at least these reasons, Applicants respectfully submit that Gross, taken individually or combined, does not anticipate independent claim 1. Applicant submits that claims 2-3 and 6, which depend from claim 1, are allowable over the cited art for at least the same reasons noted above.

Claims 15-16, 18, and 20

The Examiner has rejected claims 15-16, 18, and 20 under 35 U.S.C. § 102 as being anticipated by Gross. Gross, taken individually or combined, fails to teach or suggest the enclosure of the present invention including a cap, a spout, *and* a stem, as is called for by claim 15. The arguments made above with respect to claim 1 are asserted again here. In particular, Gross fail to disclose a distinct stem as called for by claim 15.

For at least these reasons, Applicants respectfully submit that Gross, taken individually or combined, do not anticipate independent claim 15. Applicant submits that claims 16, 18, and 20, which depend from claim 15, are allowable over the cited art for at least the same reasons noted above.

Double Patenting

The Examiner has rejected claims 1-20 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-14 and 19-24 of prior U.S. Patent No. 6,702,161 ('161 patent). In response, Applicants respectfully submit that claims 1-20 of the present application are not identical to those of the '161 patent, and therefore, the rejection should be under the judicially created doctrine of obviousness-type double patenting. For example, Applicants direct the Examiner's attention to the "spout top including a central aperture" in claim 1 of the '671 patent versus the "spout top including an aperture" of pending claim 1.

Submitted herewith is a Terminal Disclaimer to Obviate a Double Patenting Rejection (37 CFR § 1.321(c)) and Certificate under 37 CFR § 3.73(b) (Terminal Disclaimer) disclaiming the terminal part of any patent granted on the above-captioned application which would extend beyond the term of the '161 patent. Applicants respectfully submit that the Examiner's nonstatutory double patenting rejection is overcome by the Terminal Disclaimer submitted herewith.

Other Matters

Claims 5, 17, and 19 stand rejected based only on double-patenting. As noted above, Applicants submit that the enclosed terminal disclaimer overcomes the double-patenting rejection. Claim 17 has been rewritten in independent form including the subject matter of the base claim and any intervening claims. Applicants reserve the right to amend claims 5 and 19 into independent form.

Applicants submit that amended claim 17 is allowable over the cited art of record for at least the reasons mentioned above. Amended claim 17 calls for an enclosure including a cap, a spout, and a stem. The art of record, including Gross, taken individually or combined, fails to disclose or suggest the stem as called for by amended claim 17.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 50-2319 (Order No. 463678-00212; Docket No. A-70385-2/DJB/VEJ).

Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Respectfully submitted,

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